ISMAIL BAKAR & ORS

v.

DIRECTOR OF LANDS AND MINES, KEDAH DARUL AMAN

COURT OF APPEAL, PUTRAJAYA
HELILIAH MOHD YUSOF JCA
HISHAMUDIN MOHD YUNUS JCA
RAMLY ALI JCA
[CIVIL APPEAL NO: K-01-34-2007]
11 OCTOBER 2010
[2010] CLJ JT(4)

LAND LAW: *Acquisition of land - Compensation - Whether Land Administrator duty bound to pay compensation as soon as may be or within reasonable time - Gross delay in paying compensation sum - Whether fatal - Whether rendering acquisition exercise "not according to law" and unconstitutional - Whether lands to be returned to owners - Land Acquisition Act 1960, ss. 29(1), 29A, 32 - Federal Constitution, art. 13(1)*

WORDS & PHRASES: *"As soon as may be" - Section 29(1) Land Acquisition Act 1960 - Meaning and import - Whether to mean "within reasonable time"*

The appellants had applied to the High Court for a declaration that the acquisition of their lands under the Land Acquisition Act 1960 ('the Act') was null and void, and for the return of the lands, on the ground that the delay of nine years (1995-2004) that the respondent had taken to effectuate payment of the compensation sums under s. 29(1) of the Act had rendered the acquisition proceedings unconstitutional and a nullity. More specifically, it was averred that the delay was unreasonable and repugnant to the words "as soon as may be" appearing in s. 29(1), with the result that the acquisition had not been "according to the law" as envisaged in art. 13(1) of the Federal Constitution. The argument, and the application, was however dismissed by the learned judge upon the view that the phrase "as soon as may be" could only mean "as soon as the Land Administrator is in a position to make the payment" (see *Tan Boon Bak & Sons Ltd v. Government of the State of Perak & Anor ('Tan Boon Bak')* and *Dato' Fong Chow & Ors v. Pentadbir Tanah Daerah Jerantut & Anor ('Dato' Fong Chow')*. The

finding aside, the learned judge had also apparently endorsed the argument that the money had not been forthcoming from Yayasan Negeri Kedah, the actual provider of the funds, until 2004, and that the respondent, in seeking to make payment, had invoked 's. 29A of the Act' and requested the appellants to make claims for late payment charges. The appellants nonetheless appealed and argued before the learned justices of appeal herein that the construction as accorded to the words "as soon as may be" by the learned judge was fatally flawed and unsustainable, and cited, in support thereof, *inter alia* the authorities of *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v. Ong Gaik Kee ('Ong Gaik Kee')* and *Pemungut Hasil Tanah, Daerah Barat Daya, Penang v. Kam Gin Paik & Ors ('Kam Gin Paik')*. The primary issue that arose was whether the deprivation of the appellants' lands was on the facts and in the circumstances illegal, such that the same must be returned to the appellants.

Held (allowing appeal; declaring acquisition null and void; returning lands to appellants)

Per Hishamudin Mohd Yunus JCA delivering the judgment of the court:

(1) Bearing in mind the decisions of the Supreme Court and the Privy Council in *Ong Gaik Kee* and *Kam Gin Paik* respectively, the deprivation of the appellants' properties had clearly not been in accordance with the law. The nine-year delay in paying the compensation is grossly unreasonable and is in contravention of s. 29(1) of the Act and art. 13(1) of the Constitution. (paras 20 & 21)

(2) The explanation that the Land Administrator was unable to pay the appellants sooner because the money was to be provided by Yayasan Negeri Kedah is unacceptable because the respondent's affidavit made no mention of this fact, and because the interpretation given to "as soon as may be" in *Tan Boon Bak* is farfetched, as s. 29(1) imposes the statutory duty to make the payment "as soon as may be" only on the Collector/Land Administrator, without alluding to the role of a third party responsible for providing the funds. Such an interpretation is also unfair and unjust and inconsistent with the spirit and purpose of s. 29(1), apart from watering down the constitutional protection guaranteed in art. 13(1) of the Constitution. In the premise, we do not think that *Tan Boon Bak* was correctly decided. (para 28)

(3) The learned judge in *Dato' Fong Chow* had equally erred when he found that "the owners themselves have contributed to the delay" (in failing to sue for the money), or that s. 29(1) had merely imposed a time frame for the payment of compensation. Section 29(1) clearly imposes a statutory duty on the Land Administrator to pay the compensation "as soon as may be", and to that end, there is no duty on the part of landowners either to ask for the payment or remind the Land Administrator of the payment. (paras 30-33)

(4) It is wrong for the respondent to have resorted to s. 29A of the Act or advised the appellants to make claims for late payment charges. The right section to be cited is s. 32, and under s. 32 there is an automatic right to be paid late payment charges as long as there has been a delay in making compensation payment by the Land Administrator. As a matter of law, therefore, there was no necessity for the appellants to make a claim for late payment charges. The appellants should be paid forthwith the late payment charges together with the compensation sums. In any case, where the delay in making payment is grossly unreasonable, as happened here, it is no answer to say that the landowner is entitled to interests for the delay. What is of paramount importance, and what justice requires, is the right to compensation within reasonable time. (paras 33 & 35)

[Declaration granted with costs of RM20,000 awarded to appellants.]

Bahasa Malaysia *Translation Of Headnotes*

Perayu-perayu telah memohon ke Mahkamah Tinggi bagi mendapatkan deklarasi bahawa pengambilan tanah-tanah mereka di bawah Akta Pengambilan Tanah 1960 ('Akta') adalah tak sah dan batal, dan untuk pengembalian tanah-tanah tersebut, atas alasan bahawa kelewatan responden yang mengambil masa selama sembilan tahun (1995-2004) untuk membayar pampasan di bawah s. 29(1) Akta telah menyebabkan prosiding pengambilan menjadi tidak berperlembagaan dan batal. Lebih khusus, ianya dihujahkan bahawa kelewatan adalah tidak munasabah dan bertentangan dengan perkataan "secepat yang boleh" di bawah s. 29(1), yang berakibat pengambilan telah tidak dibuat "mengikut undang-undang" seperti yang dituntut oleh fasal 13(1) Perlembagaan Persekutuan. Hujah

ini, dan permohonan, bagaimanapun ditolak oleh yang arif hakim atas pandangan bahawa ungkapan "secepat yang boleh" hanya bermaksud "sebaik sahaja Pentadbir Tanah berada dalam keadaan yang mengizinkannya membuat bayaran" (lihat *Tan Boon Bak & Sons Ltd v. Government of the State of Perak & Anor ('Tan Boon Tak')* and *Dato Fong Chow & Ors v. Pentadbir Tanah Daerah Jerantut & Anor ('Dato Fong Chow')*. Selain dari itu, yang arif hakim juga nampaknya bersetuju dengan hujah bahawa wang pampasan dari Yayasan Negeri Kedah, pembayar sebenar pampasan, hanya diperolehi pada tahun 2004, dan bahawa responden, sewaktu membuat bayaran, telah merujuk kepada 's. 29A Akta' dan meminta perayu-perayu membuat tuntutan bagi mendapatkan faedah bayaran lewat. Apapun, perayu-perayu telah merayu dan di hadapan yang arif hakim-hakim rayuan di sini berhujah bahawa takrifan yang diberikan kepada perkataan "secepat yang boleh" oleh yang arif hakim adalah cacat dan tidak boleh dipertahankan, dan bagi menyokong hujah, telah mengemukakan autoriti-autoriti berikut, iaitu *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v. Ong Gaik Kee ('Ong Gaik Kee')* and *Pemungut Hasil Tanah, Daerah Barat Daya, Penang v. Kam Gin Paik & Ors ('Kam Gin Paik')*. Isu utama yang berbangkit adalah sama ada pengambilan tanah perayu-perayu, berdasarkan fakta dan halkeadaan yang wujud, adalah tak sah, sekaligus menyebabkan tanah-tanah tersebut perlu dikembalikan kepada mereka.

Diputuskan (membenarkan rayuan; mengisytihar pengambilan tak sah dan batal; mengembalikan tanah kepada perayu-perayu) Oleh Hishamuddin Yunus HMR menyampaikan penghakiman mahkamah:

(1) Mengambilkira keputusan-keputusan Mahkamah Agong dan Majlis Privi masing-masing di dalam *Ong Gaik Kee* dan *Kam Gin Paik*, pelupusan hartanah perayu-perayu jelas tidak dibuat mengikut undang-undang. Kelewatan sembilan tahun dalam membayar pampasan adalah sangat tidak munasabah dan bertentangan dengan s. 29(1) Akta serta fasal 13(1) Perlembagaan.

(2) Penjelasan bahawa Pentadbir Tanah tidak berupaya membayar perayu-perayu lebih awal kerana terpaksa menunggu wang dari Yayasan Negeri Kedah tidak boleh diterima kerana afidavit responden tidak menyebut mengenai fakta ini, dan kerana tafsiran yang diberi kepada "secepat yang boleh" di dalam *Tan Boon Bak* adalah tidak tepat, memandangkan s. 29(1)

mengenakan tanggungjawab statutori untuk membuat bayaran "as soon as may be" hanya ke atas Pemungut/Pentadbir Tanah, tanpa merujuk kepada peranan pihak ketiga yang bertanggungjawab untuk menyediakan bayaran. Pentafsiran seperti itu juga adalah tidak adil dan tidak konsisten dengan semangat dan maksud s. 29(1), selain melemahkan jaminan perlindungan perlembagaan yang dibuat di bawah fasal 13(1) Perlembagaan. Dengan yang demikian, kami tidak fikir bahawa kes *Tan Boon Tak* telah diputuskan dengan betulnya.

(3) Yang arif hakim di dalam *Dato Fong Chow* juga khilaf bilamana mendapati bahawa "pemilik-pemilik sendiri telah menyumbang kepada kelewatan" (apabila gagal menuntut wang), atau bahawa s. 29(1) hanya menetapkan satu rangka waktu bagi pembayaran pampasan. Seksyen 29(1) jelas mengenakan tanggungjawab statutori kepada Pentadbir Tanah untuk membayar pampasan "secepat yang boleh", dan berkaitan itu, tiada tanggungan di pihak pemilik tanah sama ada untuk menagih bayaran atau mengingatkan Pentadbir Tanah mengenai pembayaran.

(4) Responden khilaf apabila merujuk kepada s. 29A Akta atau menasihati perayu-perayu untuk membuat tuntutan bayaran lewat. Seksyen yang betul yang patut dirujuk adalah s. 32, dan di bawah s. 32 hak untuk dibayar faedah bayaran lewat berbangkit secara automatik, iaitu sebaik sahaja terdapat kelewatan dalam pembayaran oleh Pentadbir Tanah. Oleh itu, di sisi undang-undang, tidak ada keperluan untuk perayu-perayu membuat tuntutan untuk faedah bayaran lewat. Perayu-perayu harus terus dibayar faedah tersebut bersekali dengan bayaran pampasan. Walau apapun, di mana kelewatan untuk membayar pampasan adalah tersangat tidak munasabah, seperti yang berlaku di sini, adalah tidak mencukupi untuk mengatakan bahawa pemilik tanah berhak kepada faedah-faedah kelewatan. Apa yang penting, dan apa yang dituntut oleh keadilan, adalah hak untuk dibayar pampasan dalam tempoh yang munasabah.

[Deklarasi dibenarkan dengan kos RM20,000 diawardkan kepada perayu-perayu.]

Case(s) referred to:

Pemungut Hasil Tanah, Daerah Barat Daya, Penang v. Kam Gin Paik & Ors [1986] 1 CLJ 283; [1986] CLJ (Rep) 33 PC ***(refd)***

Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v. Ong Gaik Kee [1983] 2 MLJ 35 ***(refd)***

Pemungut Hasil Tanah, Kuantan v. Oriental Rubber & Palmoil Sdn Bhd [1985] 1 LNS 127 FC ***(refd)***

Tan Boon Bak & Sons Ltd v. Government of the State of Perak & Anor [1983] 1 MLJ 117 ***(ovrd)***

Dato' Fong Chow & Ors v. Pentadbir Tanah Daerah Jerantut & Anor [1988] 1 LNS 94 HC ***(ovrd)***

Legislation referred to:

Federal Constitution, art. 13(1)

Land Acquisition Act 1960, ss. 8, 12, 14, 16, 29A, 29(1), 32

For the appellants - V Rajadevan; M/s Rajadevan & Assocs

For the respondent - Murtazadi Amran (Rafiah Yusof with him); SFCs

Reported by Wan Sharif Wan Ahmad

JUDGMENT

Hishamudin Mohd Yunus JCA:

[1] This is an appeal by the appellants (the plaintiffs before the High Court) against the decision of the learned judge of the High Court of Alor Setar. On 17 January 2007 the learned judge had dismissed the appellants' originating summons action against the respondent (the defendant at the High Court) for a declaration that the purported acquisition proceedings of their lands pursuant to the Land Acquisition Act 1960 ('the Act') be declared null and void.

[2] We have allowed the appeal with costs and we now give our grounds.

[3] The facts of the case are not disputed.

[4] The appellants are the registered owners of the following three parcels of lands:

(1) SPK 5736 (now known as GM 370), Lot 201;

(2) SPK 5737 (now known as GM 371) Lot 202; and

(3) SPK 5739 (now known as GM 372) Lot 204.

[5] These parcels of lands are situated in the mukim of Telok Chengai, in the district of Kota Setar, Kedah.

[6] On 25 May 1995 the State Authority of Kedah published in the Gazette (pursuant to s. 8 of the Land Acquisition Act 1960) of its decision to acquire the appellants' lands pursuant to the provisions of the Land Acquisition Act. The purpose of the acquisition was for a project known as 'Projek Pembangunan Ampang Jaya, Residential, Recreational and Cultural Park di Mukim Telok Chengai, Daerah Kota Setar'.

[7] Following the publication of the notice of the decision to acquire in the Gazette, and in compliance with the prescribed formalities, the Land Administrator held an inquiry (Inquiry No. 50 of 1995) under s. 12 of the Act to determine the appropriate compensation to be awarded to the respective landowners, that is to say, to the appellants.

[8] On 17 December 1995, the Land Administrator, pursuant to s. 14 of the Act, filed in his office the Form G stating his award for each of the three parcels of lands. The compensation stated in the award was RM1 per square foot.

[9] Under s. 16 of the Act, after filing his award under s. 14 of the Act, the Land Administrator must serve on each of the landowners owners a form known as Form H that shall state the award of the Land Administrator (as stated in Form G). There is nothing in the affidavits of the parties that state that Form H had been served on the landowners. However, there is no suggestion from either party (be it the plaintiffs or the defendant) that Form H was never served. Hence, for the purpose of this judgment, it shall be assumed that the Form H was served on the landowners soon after the filing of Form G.

[10] Under s. 29 of the Act, there is a duty on the part of the Land Administrator to make payment as soon as may be after the service on the landowners of the notice of the award in Form H.

[11] Section 29 of the Act states:

> **Payment of compensation or deposit in Court**
>
> 29 (1) After a notice of award in Form H has been served in the manner prescribed by section 53 upon all interested persons the Land Administrator shall, as soon as may be, make payment of each amount awarded entitled thereto unless:

A (a) there shall be no person competent to receive such payment;

(b) the person entitled thereto does not consent to receive the amount awarded; or

(c) there is a dispute as to the right or title of the person to
B receive the compensation, or as to the apportionment thereof.

[12] However, in the present case, the compensations were never paid within reasonable time to the landowners. It was only some nine years later (that is, nine years after the publication of the intended
C acquisition notice in the Gazette pursuant to s. 8 of the Act), that the State Director of Lands and Mines, Kedah ('the State Director'), wrote letters (dated 1 January 2004) to the landowners requesting them to collect the cheques (that is, the compensation payments) from his office (that is, the office of the State Director of Lands and
D Mines). In the same letters, they are also advised to 'make a claim for late payment charges' by reason of the delay on the part of the Land Administrator in paying the compensation. The relevant paragraph of the letter (taking the letter to the third appellant/ plaintiff, as an example) from the State Director pertaining to late
E payment charges reads:

> 3. Berdasarkan peruntukan section 29A Akta Pengambilan Tanah 1960 pihak tuan juga boleh menuntut bayaran denda lewat 8% setahun selama 8.8 tahun berjumlah RM195,106.20 bagi keseluruhan lot 201. Jumlah bayaran denda lewat 8% untuk
> F bahagian tuan/puan ialah RM26,082.60. Dengan ini pihak tuan adalah dinasihatkan membuat tuntutan ini dengan kadar yang segera bagi membolehkan pentadbiran ini mengambil tindakan selanjutnya.

[13] The reference to s. 29A of the Act by the State Director in
G the above letter is, legally, erroneous but we shall allude to this issue later in this judgment.

[14] The State Director in his affidavit offers no explanation for the unreasonably long delay. He only avers that the appellants are
H entitled to late payment charges for the delay.

[15] The appellants rejected the compensations on the grounds that the length of delay in making the payments of the compensations was unreasonable. They contend that the unreasonable delay is
I contrary to s. 29(1) of the Act and thus was not in accordance with the law; and since the acquisition was not in accordance with the

law, the acquisition was contrary to art. 13(1) of the Federal Constitution. They argue that since the acquisition was unlawful as well as unconstitutional, therefore, the acquisition was invalid and null and void.

[16] Before this court, the learned counsel for the appellants, Encik Rajadevan, in his submission refers to the following cases:

(1) *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v. Ong Gaik Kee* [1983] 2 MLJ 35;

(2) *Pemungut Hasil Tanah, Daerah Barat Daya, Penang v. Kam Gin Paik & Ors* [1986] 1 CLJ 283; [1986] CLJ (Rep) 33 and

(3) *Pemungut Hasil Tanah, Kuantan v. Oriental Rubber & Palmoil Sdn. Bhd.* [1985] 1 LNS 127; [1986] 1 MLJ 39.

[17] In *Ong Gaik Kee*, the declaration under s. 8 of the Land Acquisition Act was published in the Gazette on 25 April 1974. However, the inquiry to determine compensation was only held seven years later. The landowner applied to the Court for *certiorari* to quash the inquiry and the award of the Collector on the ground of unreasonable delay. The High Court quashed the award and the inquiry, and on appeal the Supreme Court affirmed the decision. Salleh Abas CJ (Malaya) (as he then was) in delivering the judgment of the Supreme Court ruled (at p. 37):

> We think that it is sufficient to decide this appeal on the basis of a simpler question, ie, whether or not in view of the long delay resulting in an injustice to the land owner the acquisition was done in accordance with the law (the Land Acquisition Act). Only in the circumstances that it is not done in accordance with the Act can we say that the acquisition is contrary to the requirement of clause (1) of Article 13 of the Federal Constitution which requires that to be lawful every deprivation of property must be done in accordance with the law.
>
> Every exercise of statutory power must not only be in conformity with the express words of the Statute but above all must also comply with certain implied legal requirements. The court has always viewed its exercise as an abuse and therefore treats it as illegal where the exercise is done for an inadmissible purpose or on irrelevant grounds or without regard to relevant consideration or with gross unreasonableness (de Smith's, 4th Edition, p. 323; and *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948] 1 KB 223).

A …

What then is the 'convenient speed'? In our view it must 'as soon as possible' or 'within a reasonable time', and not 'as late as possible'. Obviously what amounts to 'convenient speed' must vary from case to case and in our judgment seven years delay is certainly not a
B 'convenient speed' as it is so far outside the normal period of time that no reasonable authority could ever regard it as reasonable. That being the case the court is entitled to strike down the impugned acquisition proceedings as illegal. (*Regina v. St. Albans Crown Court, Ex-parte Cinnamond* [1981] QB 480 and *Regina v. Tottenham*
C *Justices, Ex-parte Dwarkados Joshi* [1982] 1 WLR 631.)

[18] The principle as stated by Salleh Abas CJ (Malaya) in the above passage (particularly, in the last paragraph) was subsequently affirmed by the Privy Council in *Kam Gin Paik*. In this case, there
D was a delay of seven years between the s. 8 declaration and the notice of the inquiry issued by the Land Administrator to determine compensation. Lord Keith of Kinkel, in delivering the judgment of the Privy Council, said (at p. 38):

Delay contrary to the express or implied statutory requirements is
E in itself a ground invalidating proceedings which follow such delay, without the necessity of any inference that the acquisition has been abandoned.

Applying these principles, their Lordships are of opinion that in this case the delay of 7 years between G. N. 89 and the appellant's
F notice of inquiry on March 22, 1979 had the effect that the latter was given in contravention of the statutory requirements and did not constitute a valid exercise of power. No attempt was made to justify or explain the delay.

G **[19]** In *Oriental Rubber & Palmoil* the notification under s. 8 of the Land Acquisition Act was published on 16 August 1979 but the award was made on 25 March 1983. There was no reasonable explanation for the long delay. The Supreme Court, following *Ong Gaik Kee* and *Kam Gin Paik* upheld the finding of the High Court
H Judge that in the absence of a reasonable explanation the long delay of three and a half years was unreasonable. However, the Supreme Court set aside the order of the High Court that quashed the inquiry and the award on the ground that the respondent (landowner) had failed to prove that he had suffered grave injustice as a result
I of the unreasonably long delay.

[20] In the present case, guided by the above authorities, in particular, *Ong Gaik Kee* and *Kam Gin Paik*, we hold that the nine-year delay in paying the compensation is grossly unreasonable and hence is in contravention of s. 29 of the Act and art. 13 cl. 1 of the Federal Constitution. Article 13 cl. 1 provides:

> **13. Rights to property.**
>
> (1) No person shall be deprived of property save in accordance with the law.

[21] Clearly in the present case the deprivation of the plaintiffs' properties has not been in accordance with the law as there had been noncompliance with s. 29(1) of the Act.

[22] Encik Murtazadi, the learned Assistant State Legal Advisor, for the respondent, submits that the word 'as soon as may be' in s. 29(1) of the Act must be interpreted to mean as soon as the Land Administrator is in a position to make the payment. He refers to two High Court decisions, namely:

(1) *Tan Boon Bak & Sons Ltd. v. Government of the State of Perak & Anor.* [1983] 1 MLJ 117; and

(2) *Dato Fong Chow & Ors v. Pentadbir Tanah Daerah Jerantut & Anor* [1988] 1 LNS 94; [1988] 3 MLJ 325.

[23] In *Tan Boon Bak*, the delay in making the payment by the Collector was seven years. The unreasonably long delay was because the authority that was to make the payment was not the Collector but the State Economic Development Corporation (SEDC). The SEDC was not able to make the payment sooner because the SEDC was in the process of reorganization and had other priorities. Ajaib Singh J (as he then was) in his judgment said (at p. 120):

> I think the words 'as soon as may be' which appear in a statute should be read as meaning that any person who is required to do something should do it as soon as he is in a position or is able to do so.

[24] On the seven years' delay the learned judge ruled it as being 'definitely inordinate':

> Giving his reasons for the delay in providing the money the general manager of the SEDC said that during the relevant years the SEDC was in the process of reorganization and they also had a number of

A priority projects on hand. I accept the evidence of the general manager but still the delay of seven years is definitely inordinate and the question to be decided now is whether this delay renders the acquisition proceedings a nullity.

B **[25]** But despite making a finding that the seven-year delay was 'definitely inordinate', the learned judge, nonetheless, went on to hold:

I have given considerable thought to this question and would say that in all the circumstances of this case the delay does not render C the acquisition proceedings null and void.

[26] In the case before us Encik Murtazadi explains that the Land Administrator was not in a position to pay the compensation sooner because the money for the compensation was to be provided by a body known as Yayasan Negeri Kedah and that the respondent D received the cheques from this body only in the year 2004.

[27] With respect, we are unable to accept this explanation for two reasons. Firstly, the respondent's affidavit makes no mention of the fact that the Land Administrator was waiting for the compensation E money to come from this body called Yayasan Negeri Kedah. Indeed, as we have mentioned earlier, the respondent's affidavit contains no explanation whatsoever for the delay.

[28] Secondly, with respect, we are unable to agree to the F interpretation of the words 'as soon as may be' in s. 29(1) as suggested by the learned Assistant State Legal Adviser or as given by Ajaib Singh J in *Tan Boon Bak* that those words mean as soon as the Collector/Land Administrator was in a position or able to make the payment. Such an interpretation is far-fetched as s. 29(1) G imposes the statutory duty to make the payment 'as soon as may be' only on the Collector/Land Administrator: the role of a third party responsible for providing the funds is not mentioned at all in s. 29(1). We are of the view that such an interpretation is inconsistent with the spirit and purpose of s. 29(1). It was unfair and H unjust to expect a landowner to wait for seven years (or, in the present case, nine years) to get his compensation just because some third party 'responsible' to provide the money did not have the money until seven years later (or, in the present case, until nine years later). What if the party concerned could come up with the I money only twenty years later? Must the landowner be expected to wait for twenty years? Clearly, such an interpretation as adopted by

the learned judge in *Tan Boon Bak* waters down the constitutional protection as to rights to property as guaranteed by art. 13, cl. (1), of the Federal Constitution. With *Ong Gaik Kee* and *Kam Gin Paik* in mind, we do not think that *Tan Boon Bak* was correctly decided.

[29] In *Dato Fong Chow* the Form H notice was dated 25 August 1983 but until 1988 the compensation was still not paid. Then by a letter dated 2 January 1988 the Lembaga Kemajuan Negeri Pahang (the authority for which the land was acquired) offered a scheme of payment: the payment of the compensation was to be made by instalments within four years, beginning with January 1988 to August 1991. The landowners rejected this offer. They, through their solicitors, demanded that payment be made within five days. The Lembaga Kemajuan Negeri Pahang did not accede to this demand. Lamin J (as he then was) refused to hold that the long delay in paying the compensation was unreasonable and hence unlawful. Instead the learned judge made a finding that the landowners themselves had contributed to the delay. The learned judge said (at p. 327):

> With regard to the alleged delay in settling the compensation, I must say the owners themselves have contributed to the delay.

[30] With respect, we are unable to agree with this finding. Section 29(1) imposes a statutory duty on the Land Administrator to pay the compensation as soon as may be. There is no duty on the part of the landowners either to ask for the payment (but the landowners, however, did ask – and rightly so – in view of the long delay) or to remind the Land Administrator (or any other authority) for the payment (but the landowners, however, through their solicitors, did send reminders – and rightly so – in view of the long delay).

[31] Further the learned judge said:

> So, simply for not paying this debt, the authority is not in breach of art 13 of the Federal Constitution. This debt must be settled 'as soon as may be' as required by s. 29(1) of the Land Acquisition Act. The said provision merely stipulates the time frame within which a debt must be settled. If it is not paid within whatever time, the owner of the land is entitled to sue for the money as long as he is not time-barred.

[32] Thus, Lamin J was of the view that s. 29(1) merely imposes a time frame (and not a statutory duty to make payment within a reasonable time) and that there was no contravention of either

s. 29(1) of the Act or of art. 13 of the Federal Constitution, and accordingly refused to grant the declaration sought by the landowners that the land acquisition was unlawful and unconstitutional by reason of unreasonable delay in paying compensation. To the learned judge, the only remedy that the landowners had in the light of the long delay in the payment of the compensation was to institute a civil suit, but he, however, did not make it clear in his judgment as to who the landowners should sue, whether it should be the Lembaga or the Collector or the State Authority. With respect, again bearing in mind *Ong Gaik Kee* and *Kam Gin Paik*, we are unable to agree with the views or the decision of Lamin J in *Dato Fong Chow*.

[33] It is further argued by the respondent that the long delay does not invalidate the acquisition of the lands as the appellants would be entitled to interests for the late payments under s. 32 of the Act. With respect, we are also unable to accept this argument. There is no merit in it. In our view, where the delay in making payment is grossly unreasonable, as has happened in the present case, where there has been a delay of nine years, it is no answer that the landowner is entitled to interests for the delay: what is of paramount importance to the landowners, who have been deprived of the use and enjoyment of his land, and what justice requires, is the right to compensation within a reasonable time. Furthermore, s. 32 ought not to be interpreted as conferring on the respondent (or the Land Administrator) a 'license' to flout the stipulation of s. 29 with impunity.

[34] Finally, we have this further observation. Section 32 of the Act provides:

> **Late payment charges**
>
> 32. (1) When the amount of any compensation awarded under this Act in respect of any land is not paid or deposited on or before the due date, the Land Administrator shall pay the amount awarded with late payment charges thereon at the rate of eight per cent per annum from the due date until the time of such payment or deposit.
>
> …
>
> (1C) In this section 'due date' in relation to any land means the date of taking possession of the land or a date three months after the service of a notice under subsection 16(1) in respect of the land, whichever is the earlier.

[35] It is to be recalled that the letters of the State Director of 1 January 2004 to the appellants referred to s. 29A of the Act. We do not think that this is the right section to cite as there was no reference to court made by the Land Administrator pursuant to the Act as the appellants had never objected to the amount of compensation. The learned Assistant State Legal Adviser, in his submission, however, correctly refers to s. 32 of the Act although he does not explain as to why the State Director's letters referred to s. 29A. Be that as it may, it is clear that under s. 32 there is an automatic right to be paid late payment charges as long as there has been a delay in making compensation payment by the Land Administrator. Under s. 32 there is no necessity for the appellants to make a claim for late payment charges. The entitlement to late payment charges is as of right and is immediate. Therefore, it is wrong for the State Director, in his letters to the appellants, to advise the appellants to 'make a claim' for late payment charges. As a matter of law the appellants need not have to make a claim in order to be paid the late payment charges. They should be paid forthwith the late payment charges together with the compensation sums. Of course, now the appellants are no longer interested in the compensation and interests: they just want their lands back.

[36] For the reasons that we have given above, we are allowing the appeal. Accordingly, we grant the declaration in terms as sought in the originating summons; and we award to the appellants costs of RM20,000.

[Appeal allowed with costs.]